

Message Text

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ACTION L-03

INFO OCT-01 AF-10 EUR-12 ISO-00 OIC-02 ARA-10 EA-10
NEA-10 CIAE-00 DODE-00 PM-05 H-01 INR-10 NSAE-00
NSC-05 PA-01 SP-02 SS-15 ICA-11 /108 W
-----083414 231908Z /12

R 231038Z AUG 78
FM AMEMBASSY VIENNA
TO SECSTATE WASHDC 7684
INFO AMEMBASSY PRETORIA

C O N F I D E N T I A L VIENNA 07585

E.O. 11652: GDS
TAGS: PFOR, UN
SUBJECT: UN CONFERENCE ON SUCCESSION OF STATES IN RESPECT
- OF TREATIES

1. CONFERENCE PLENARY COMPLETED ITS WORK ON AUGUST 22
AND THE SIGNING OF THE FINAL ACT WILL TAKE PLACE THIS
EVENING(AUGUST 23).

2. SO FAR THERE HAVE BEEN NO PROPOSALS OR PUBLIC DIS-
CUSSIONS CONCERNING THE POSSIBILITY THAT THE COUNCIL
FOR NAMIBIA MAY WISH TO SIGN THE FINAL ACT. WE HAVE BEEN
TOLD INFORMALLY THAT THE UN LEGAL CONSEL SUY HAS NO
OBJECTION TO HAVING THE COUNCIL SIGN. WE HAVE NOT BEEN
ABLE TO CONFIRM THIS DIRECTLY WITH SUY, WHO SPENDS VERY
LITTLE TIME AT THE CONFERENCE SESSIONS.

3. THE CONVENTION ADOPTED BY THE CONFERENCE IS ESSENTIALLY
THE DRAFT RECOMMENDED BY THE INTERNATIONAL LAW COMMISSION.
THE MOST NOTABLE CHANGES ARE AS FOLLOWS:

A. THE ADDITION OF THE DISPUTE SETTLEMENT CLAUSES.
B. THE ADDITION OF PROVISIONS TO ARTICLE 7 PROVIDING A
MECHANISM ALLOWING STATES TO AGREE TO APPLY THE CONVENTION
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RETROACTIVELY.
C. THE ADDITION OF PARAGRAPH 3 TO ARTICLE 12, EXPRESSLY
EXCLUDING MILITARY BASE AGREEMENTS FROM THE COVERAGE OF
ARTICLE 12.
D. THE ADDITION OF ARTICLE 12 BIS ON PERMANENT SOVEREIGNTY
OVER NATURAL RESOURCES.
E. THE DELETION OF ARTICLE 33, PARAGRAPH 3.

OTHER SIGNIFICANT DEVELOPMENTS WERE:

- A. THE ADOPTION OF A RESOLUTION ON THE NAMIBIA ISSUE.
- B. ADOPTION OF A US SPONSORED RESOLUTION ON CONFLICTING TREATY OBLIGATIONS UNDER ARTICLE 30.
- C. WITHDRAWAL FOR LACK OF SUPPORT OF US SPONSORED ARTICLE 37 BIS ON PROCEDURES FOR OBJECTIONS TO SUCCESSION.
- D. DEFEAT OF ATTEMPTS BY FRANCE AND SWITZERLAND TO APPLY CLEAN SLATE RULE TO SITUATIONS UNDER ARTICLE 33 (1) (A).
- E. DEFEAT OF PROPOSAL BY FRG TO APPLY CLEAN SLATE RULE TO BILATERAL TREATIES IN ARTICLE 33 SITUATIONS.

4. WITH RESPECT TO DISPUTE SETTLEMENT CLAUSES, WE DID BETTER THAN EXPECTED, BUT THE RESULTS ARE STILL INADEQUATE. THE CENTRAL THEME OF THOSE OPPOSED TO COMPULSORY ARBITRATION OR COMPULSORY ICJ ADJUDICATION IS THAT THE WORLD COMMUNITY IS QUOTE NOT YET READY UNQUOTE FOR SUCH STEPS. IT IS SMALL COMFORT TO KNOW THAT THIS ARGUMENT IS BASED ON AN ASSUMPTION THAT COMPULSORY DISPUTE SETTLEMENT PROVISIONS ARE THE RIGHT APPROACH. U.S. CONNALLY AMENDMENT TO OUR ACCEPTANCE OF COMPULSORY JURISDICTION OF ICJ UNDER STATUTE ARTICLE 36 (2) WAS USED AGAINST US. WE WERE CHARGED NOT TOO SUBTLY WITH HYPOCRISY IN PUSHING HARD FOR A SYSTEM THAT WE WERE NOT READY TO ACCEPT OURSELVES. THERE WAS A MARKED TENDENCY TO CONFUSE ICJ JURISDICTION UNDER 36 (2) WITH 36 (1).

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5. OTHER SIGNIFICANT CHANGES IN THE CONVENTION HAVE BEEN REPORTED IN SEPARATE MESSAGES. THE REMAINING IMPORTANT DEVELOPMENTS WILL BE SPELLED OUT IN DETAIL IN THE U.S. DELEGATION REPORT ON THE CONFERENCE. BORG

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: SECESSION
Control Number: n/a
Copy: SINGLE
Draft Date: 23 aug 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978VIENNA07585
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780345-0304
Format: TEL
From: VIENNA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780830/aaaaazcu.tel
Line Count: 98
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 5727a45c-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 07 jun 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1641373
Secure: OPEN
Status: NATIVE
Subject: UN CONFERENCE ON SUCCESSION OF STATES IN RESPECT - OF TREATIES
TAGS: PFOR, PEPR, UN, STATE
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/5727a45c-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014